

Baruch C. Cohen, Esq. (SBN 159455)
LAW OFFICE OF BARUCH C. COHEN
A Professional Law Corporation
4929 Wilshire Boulevard, Suite 940
Los Angeles, California 90010
(323) 937-4501 Fax (323) 937-4503
e-mail: baruchcohen@baruchcohenesq.com

Attorney For Defendant Farhad Naderi

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re
FARHAD NADERI
Debtor

FRED FARID ASHOUR
Plaintiff

vs.

FARHAD NADERI
Defendant

Case No. 8:17-bk-12188-ES

Adv. 8:17-ap-01233-ES

Before the Honorable Erithe Smith

Chapter 7

**MOTION TO DISMISS COMPLAINT TO
DETERMINE NONDISCHARGEABILITY
OF DEBT PURSUANT TO 11 U.S.C. §
523(a)(2), DENIAL OF DISCHARGE
PURSUANT TO 11 U.S.C. § 727(a), (a)(3),
(a)(4), and (a)(5)**

[F.R.C.P. §§9(b), 12(b)(6); F.R.B.P. §§7009,
7012]

Date: 3-22-2018

Time: 2:00pm

Courtroom 5A

411 West Fourth Street, Santa Ana CA 92701

TO PLAINTIFF FRED FARID ASHOUR AND HIS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on 3-22-2018, at 2:00 pm in the Courtroom of the Honorable Erithe Smith, United States Bankruptcy Judge, Courtroom 5A located at the United States Bankruptcy Court Central District of California Ronald Reagan Federal Building and Courthouse 411 West Fourth Street, Santa Ana, CA 92701-459, Debtor and Defendant Farhad Naderi (“Defendant”) moves for an order dismissing the *Complaint to Determine Nondischargeability of*

1 *Debt Pursuant to 11 U.S.C. § 523, Denial of Discharge Pursuant to 11 U.S.C. § 727(a)(1), (a)(3), (a)(4),*
2 *and (a)(5) (“Complaint”)* filed herein by Plaintiff Fred Farid Ashour (“Plaintiff”).

3 The *Motion to Dismiss* will be based on this Notice, on the attached Memorandum of Points
4 and Authorities, on all the papers and records on file in this action, and on such oral and documentary
5 evidence as may be presented at the hearing of the *Motion*.

6 Defendant brings this *Motion to Dismiss* pursuant to F.R.C.P. §§9(b), 12(b)(6), and F.R.B.P.
7 §§7009, 7012, on the grounds that Plaintiff has failed to state a claim upon which relief may be
8 granted. Plaintiff’s Complaint fails to meet even the minimal elements of 11 U.S.C. §523(a)(2) and
9 § 727(a). Plaintiff attempts to allege causes of action by providing an excessive listing of vague,
10 redundant, and ultimately confusing assertions of fact (many of which only marginally qualify as
11 facts), then, failing to apply those assertions to the elements of any given cause of action, makes only
12 sweeping conclusory declarations of Defendant’s liability. As a result, the pleading defies a basis for
13 drawing any reasonable inference that Defendant is responsible for the misconduct alleged, let alone
14 any of the injuries or damages which Plaintiff claims to have suffered. It is not the responsibility of
15 Defendant, and certainly not the responsibility of the Court, to decipher the relevant facts from the
16 referenced narrative in order to construct Plaintiff’s claims for relief.

17 Pursuant to Local Bankruptcy Rule 9013-1, any objection or response to this *Motion* must be
18 stated in writing, filed with the Clerk of the Court and served on Defendant and his counsel no later
19 than fourteen days prior to the hearing. Failure to so state, file and serve any opposition may result in
20 the Court failing to consider the same.

21
22 DATED: January 8, 2018

LAW OFFICE OF BARUCH C. COHEN
A Professional Law Corporation

23
24 By /s/ Baruch C. Cohen
25 Baruch C. Cohen, Esq.
26 *Attorney for Defendant Farhad Naderi*
27
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1. **MEMORANDUM OF POINTS & AUTHORITIES**

a. **BACKGROUND**

On 5-31-2017, the Debtor commended this chapter 7 bankruptcy.

On 12-7-2017, Plaintiff commenced this Complaint. The First Cause of Action is for Intentional Transfer and Concealment of Debtor's Property or Property of the Estate in Violation of 11 U.S.C. §727(a)(2)(A) and (B). The Second Cause of Action is for False Oath Under 11 U.S.C. §727(a)(4)(A). The Third cause of action is for Money Obtained by False Pretenses and Actual Fraud Pursuant to 11 U.S.C. §523(a)(2)(A).

Plaintiff's First Cause of Action for Intentional Transfer and Concealment of Debtor's Property or Property of the Estate in Violation of 11 U.S.C. §727(a)(2)(A) and (B) is based on an allegation that the Defendant knowingly, intentionally, and fraudulently concealed, transferred and or removed, or permitted to be transferred, removed, and/or concealed monies received in connection with his ownership interest, whether legal or equitable in the real property at 32 Via Del Tesoro, San Clemente CA; both sections are barred by the applicable time provisions of the Code. As to the 1-year reachback provision of 11 U.S.C. §727(a)(2)(A), the Complaint is silent about what was concealed or transferred during the period of 5-31-2016 - 5-31-2017. As to the post-petition provision of 11 U.S.C. §727(a)(2)(B), the Complaint is silent about what was concealed or transferred after the Petition Date of 5-31-2017.

Plaintiff's Second Cause of Action is for False Oath Under 11 U.S.C. §727(a)(4)(A) is based on two (2) very simple factual scenarios:

Defendant checked off the box contained in his Voluntary Petition, that he did not "use" a business name and Employer Identification Number (EIN) in the last 8 years." Plaintiff alleges that checked box was untrue because Defendant had an interest in a California corporation named Miss Sunshine's Gourmet Treats, that was incorporated in 6-21-2010 and suspended on 1-2-2013. Plaintiff's Complaint does not allege that Defendant actually "used" this company. If all Defendant did was incorporate and never used the company, there would be no violation. Further, the Complaint cites no facts that this was more than an innocent and inadvertent oversight. No facts were

1 cited that this was a knowingly and fraudulently made false oath.

2 Defendant failed to list in his Schedule E, two debts to the California Franchise Board,
3 one in the amount of \$81,178.00 and the other in the amount of \$29,509.00. Plaintiff does not allege
4 that the California Franchise Tax debts were still in effect at the time of the 5-31-2017 Petition Date.
5 If they were not, and were either settled or paid off beforehand (which they actually were), there would
6 be no obligation to list them in his Schedule E. Further, the Complaint cites no facts that this was
7 more than an innocent and inadvertent oversight. No facts were cited that this was a knowingly and
8 fraudulently made false oath.

9 Plaintiff's Third cause of action for Money Obtained by False Pretenses and Actual Fraud
10 Pursuant to 11 U.S.C. §523(a)(2)(A) alleges that as of 1-16-2013 (the time Defendant allegedly
11 induced Plaintiff to release his lien securing the Plaintiff's loan of \$275,000.00 to Defendant to
12 allow Defendant to sell the real property which was subject to the lien), Defendant knew he was not
13 going to pay back the loan to Plaintiff and had no intention of doing so. He allegedly represented to
14 Plaintiff that if Plaintiff would release the lien, Defendant would sell the subject property and pay
15 back plaintiff in full. Plaintiff does not explain how this fraud claim is not barred by the applicable
16 3-year statute of limitations for fraud of Code of Civil Procedure § 338? Said fraud claim was
17 discharged by operation of law 3 years after, as of 1-16-2016. Further, according to the Complaint,
18 Defendant said that he would sell the property, and indeed sold the property. Wherein lies the fraud?

19 Further, the fraud claim in the Complaint is precluded and barred by the doctrine of judicial
20 estoppel. The Orange County lawsuit entitled: Fred Ashour vs. Farhad Naderi, #
21 30-2016-00869831-CU-BC-CJC for breach of contract and common counts resulted in a default
22 judgement against Defendant on 3-29-2017, did not list a fraud cause of action against Defendant.
23 The doctrine of judicial estoppel precludes Plaintiff from asserting the fraud cause of action in the
24 adversary complaint against Defendant since it was not raised in the underlying state court action.
25 Therefore, the motion to dismiss should also be granted for failure to state a claim upon which relief
26 can be granted based on judicial estoppel.

27 Accordingly, the task has fallen upon Defendant to bring the instant *Motion to Dismiss*, for
28

1 failure to state a claim upon which relief can be granted pursuant to Rule 7012 of the Federal Rules
2 of Bankruptcy Procedure, incorporating by reference, Rule 12(b)(6) of the Federal Rules of Civil
3 Procedure in order to demonstrate that Plaintiff's pleading is filled with superfluous matter, alleging
4 conduct, damages, and events which are so remote in time as to be time-barred and allegations which
5 are mere conclusions.

6 b. **ARGUMENT**

7 A complaint must allege sufficient factual matter, which if accepted as true would "state a
8 claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949
9 (2009), quoting, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially
10 plausible when a court can draw a reasonable inference that the defendant is liable for misconduct. Id.
11 The complaint must state a claim for relief that is plausible in order to survive a motion to dismiss.
12 *Ashcroft v. Iqbal*, 129 S. Ct. at 1950. A dismissal without leave to amend should not be granted unless
13 "the complaint could not be saved by any amendment." *Polich v. Burlington Northern, Inc.*, 942 F.2d
14 1467, 1472 (9th Cir. 1991) (citation omitted).

15 Federal Rules of Civil Procedure, Rule 12(b)(6) provides, in pertinent part:

16 Every defense, in law or fact, to a claim for relief in any pleading, whether a claim,
17 counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive
18 pleading thereto if one is required, except that the following defenses may at the option
of the pleader be made by motion: ... (6) failure to state a claim upon which relief can
be granted

19 Courts have increasingly recognized that under appropriate circumstances these motions are
20 useful and even necessary tools for disposing of insupportable claims. Thus, while the Court, in
21 deciding a motion to dismiss, must accept as true all material allegations of a complaint and construe
22 them in the light most favorable to the plaintiff. *N.L. Industries, Inc. v. Kaplan*, 792 F.2d 896, 898 (9th
23 Cir. 1986). "To survive a motion to dismiss, a complaint must contain sufficient factual matter,
24 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S.Ct.
25 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has
26 facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
27 inference that the defendant is liable for the misconduct alleged." (*Ibid.*) In other words, the relevant
28

1 question for purposes of a motion to dismiss for failure to state a claim is “whether, assuming the
2 factual allegations are true, the plaintiff has stated a ground for relief that is plausible.” *Ashcroft*,
3 *supra*, 129 S.Ct. at 1959. However, the Court need not accept conclusory allegations, unwarranted
4 deductions or unreasonable inferences. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.
5 1981), *cert. denied*, 454 U.S. 1031, 102 S.Ct. 567, 70 L.Ed. 2d 474 (1981). Nor need a court assume
6 that Plaintiff can prove facts different from those it has alleged. *Associated Gen. Contractors of Calif.*
7 *v. California State Council of Carpenters* 459 U.S. 519, 526 (1983). As one court has put it, courts
8 need not “swallow the plaintiff’s invective hook, line, and sinker; bald assertions, unsupportable
9 conclusions, periphrastic circumlocutions, and the like need not be credited.” *Aulson v. Blanchard* 83
10 F.3d 1, 3 (1st Cir. 1996).

11 Federal Rule of Civil Procedure 12(b)(6), made applicable to bankruptcy by Federal Rule of
12 Bankruptcy Procedure 7012, is similar to the common law general demurrer in that it tests the legal
13 sufficiency of the claim or claims stated in the Plaintiff’s First Amended Complaint. A court must
14 decide whether the facts alleged, if true, would entitle the plaintiff to some form of legal remedy.
15 *Conley v Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957); *De La Cruz v Tormey* 582 F.2d 45, 48
16 (9th Cir. 1978).

17 Therefore, a Rule 12(b)(6) dismissal motion is proper where there is an absence of sufficient
18 facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dept*, 901 F.2d 696, 699
19 (9th Cir. 1990); *Graehling v. Village of Lombard, III*, 58 F.3d 295, 297 (7th Cir. 1995). If a critical
20 threshold element is missing from the Plaintiff’s Complaint, a motion to dismiss under Rule 12(b)(6)
21 must be granted. This is precisely the problem with Plaintiff’s Complaint - alleged facts are not stated
22 with the requisite specificity.

23 i. **PLAINTIFF’S COMPLAINT IS PROPERLY DISMISSED PURSUANT**
24 **TO F.R.C.P. §§9(B), 12(B)(6) AND F.R.B.P. §§7009, 7012**

25 (1) **PLAINTIFF’S 1ST CAUSE OF ACTION UNDER 11 U.S.C.**
26 **§727(a)(2)(A) IS PROPERLY DISMISSED**

27 11 U.S.C. §727(a)(2)(A) - Discharge provides:
28

1 (a) The court shall grant the debtor a discharge, unless—
2 (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the
3 estate charged with custody of property under this title, has transferred, removed,
4 destroyed, mutilated, or concealed, or has permitted to be transferred, removed,
5 destroyed, mutilated, or concealed—
6 (A) property of the debtor, within one year before the date of the filing of the petition
7 [Emphasis added]

8 Two elements comprise an objection to discharge under 11 U.S.C. § 727(a)(2)(A): 1) a
9 disposition of property by or at the sufferance of the debtor by transfer, removal, destruction,
10 mutilation, or concealment; and 2) a subjective intent on the debtor's part to hinder, delay or defraud
11 a creditor through the act disposing of the property. Both elements must take place within 1-year of
12 the Petition Date of 5-31-2017 (the one-year pre-filing period); acts and intentions occurring before
13 this period are forgiven. *In re Lawson*, 122 F3d 1237 (CA9 1997).

14 This section is construed liberally in favor of the debtor and strictly against those objecting to
15 discharge. Before a court can refuse a discharge under 11 U.S.C. § 727(a)(2)(A), it must be shown that
16 there was an actual transfer of valuable property belonging to the debtor which reduced the assets
17 available to the creditors and which was made with fraudulent intent. *In re Garcia*, 168 B.R. 403 (D.
18 Ariz. 1994).

19 The Defendant had no obligation to disclose an inactive suspended company, that is worth
20 nothing, that is not material, that did no business at the time of the Petition, that had no customers at
21 that time, and that had no employees then. The omission of this asset was not a detriment to creditors.
22 This asset bears no relationship whatsoever to the Debtor's current business transactions, nor did it
23 concern the discovery of assets, business dealings, or the existence and disposition of the Debtor's
24 property." *In re Chalik*, 748 F.2d 616, 617 (11th Cir.1984).

25 In fact, if this case should go to trial, the evidence will show that said property was
26 substantially underwater and was in a nonjudicial foreclosure. Plaintiff's security on the property was
27 eclipsed by the substantial liens on the property before him. There was simply no equity in this
28 property. Plaintiff released his worthless lien in order to sell the property in a short sale to avoid the
adverse ramifications of a foreclosure and capital gains taxes.

According to the Complaint, Defendant's alleged fraud occurred on 1-16-2013 (the time

1 Defendant induced Plaintiff to release his lien securing the Plaintiff's loan of \$275,000.00 to
2 Defendant to allow Defendant to sell the real property which was subject to the lien), which is
3 beyond the 1-year reachback provision of 11 U.S.C. §727(a)(2)(A). The Complaint is silent about
4 what was concealed or transferred during the period of 5-31-2016 - 5-31-2017.

5 There is no factual allegation in the Complaint of any subjective intent on the Debtor's part to
6 hinder, delay or defraud a creditor, or any creditor, from 5-31-2016 - 5-31-2017.

7 Accordingly, Plaintiff's 1st Cause of Action under 11 U.S.C. §727(a)(2)(A) is properly
8 dismissed.

9 (2) PLAINTIFF'S 1ST CAUSE OF ACTION UNDER 11 U.S.C.
10 §727(a)(2)(B) IS PROPERLY DISMISSED

11 11 U.S.C. §727(a)(2)(B) - Discharge provides

12 (a) The court shall grant the debtor a discharge, unless—

13 (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the
14 estate charged with custody of property under this title, has transferred, removed,
15 destroyed, mutilated, or concealed, or has permitted to be transferred, removed,
16 destroyed, mutilated, or concealed—

17 (B) property of the estate, after the date of the filing of the petition; [Emphasis
18 added]

19 Two elements comprise an objection to discharge under 11 U.S.C. § 727(a)(2)(B): 1) a
20 disposition of property by or at the sufferance of the debtor by transfer, removal, destruction,
21 mutilation, or concealment; and 2) a subjective intent on the debtor's part to hinder, delay or defraud
22 a creditor through the act disposing of the property. Both elements must take place *after* the Petition
23 Date of 5-31-2017.

24 The Complaint is silent about what was concealed or transferred after the Petition Date of 5-
25 31-2017.

26 Accordingly, Plaintiff's 1st Cause of Action under 11 U.S.C. §727(a)(2)(B) is properly
27 dismissed.

28 (3) PLAINTIFF'S 2nd CAUSE OF ACTION UNDER 11 U.S.C.
§727(a)(4) IS PROPERLY DISMISSED

11 U.S.C. §727(a)(4)(A) - Discharge provides:

1 (a) The court shall grant the debtor a discharge, unless—
2 (4) the debtor knowingly and fraudulently, in or in connection with the case—
(A) made a false oath or account

3 Plaintiff's Second Cause of Action is for False Oath Under 11 U.S.C. §727(a)(4)(A) is based
4 on two (2) very simple factual scenarios:

5 Defendant checked off the box contained in his Voluntary Petition, that he did not
6 "use" a business name and Employer Identification Number (EIN) in the last 8 years." Plaintiff
7 alleges that checked box was untrue because Defendant had an interest in a California corporation
8 named Miss Sunshine's Gourmet Treats, that was incorporated in 6-21-2010 and suspended on 1-2-
9 2013. Plaintiff's Complaint does not allege that Defendant actually "used" this company. In fact, the
10 Complaint ¶ 25 misstates the standard: "debtor failed to set forth any information regarding his
11 ownership interest or other interest in Miss Sunshine's Gourmet Treats." The Voluntary Petition does
12 not obligate a debtor to identify companies that he owns. Schedule B does. The Voluntary Petition
13 merely asks what companies Debtor "uses." The Complaint cites no facts that the Debtor "used" or
14 "uses" the suspended company. Again, if all Defendant did was incorporate and never used the
15 company, there would be no violation. Further, the Complaint cites no facts that this was more than
16 an innocent and inadvertent oversight. No facts were cited that this was a knowingly and fraudulently
17 made false oath.

18 Defendant failed to list in his Schedule E, two debts to the California Franchise Board,
19 one in the amount of \$81,178.00 and the other in the amount of \$29,509.00. Plaintiff does not allege
20 that the California Franchise Tax debts were still in effect at the time of the 5-31-2017 Petition Date.
21 If they were not, and were either settled or paid off beforehand (which they actually were), there would
22 be no obligation to list them in his Schedule E. Further, the Complaint cites no facts that this was more
23 than an innocent and inadvertent oversight. No facts were cited that this was a knowingly and
24 fraudulently made false oath.

25 In fact, if this case should go to trial, the evidence will show that the California Franchise Tax
26 Board released the \$81,178 debt on 5-1-2016, and released the \$29,508 debt on 11-1-2014. As a
27 general rule, the court may not consider any material beyond the pleadings in considering a motion
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1 to dismiss under Rule 12(b)(6). *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (citation
2 omitted). A court may “take judicial notice of matters of public record without converting a motion
3 to dismiss into a motion for summary judgment . . . but [only when taking] judicial notice of a fact that
4 is [not] subject to reasonable dispute. Id. at 689-690; see also, Fed. R. Evid. 201. In considering
5 defendant’s motion to dismiss, the court may take judicial notice of the Lexis/Nexis report on
6 Defendant that reflects the Franchise Tax Boards release of the Debtor’s debts - all pre-petition.¹

7 Accordingly, Plaintiff’s 2nd Cause of Action under 11 U.S.C. §727(a)(4) is properly dismissed.

8 (4) **PLAINTIFF’S 3rd CAUSE OF ACTION UNDER 11 U.S.C.**
9 **§523(a)(2)(A) IS PROPERLY DISMISSED**

10 (a) **PLAINTIFF FAILED TO ALLEGE FRAUD WITH THE**
11 **REQUISITE SPECIFICITY**

12 Federal Rule of Civil Procedure 9(b), made applicable to bankruptcy by Federal Rule of
13 Bankruptcy Procedure 7009, states as follows: “In all averments of fraud or mistake the circumstances
14 constituting fraud or mistake shall be stated with particularity” Federal Rule of Civil Procedure
15 9(b). See, *In re Kubick*, 171 B.R. 658, 660 (9th Cir. B.A.P. 1994); citing *In re Schwartzman*, 63 B.R.
16 348, 355 (Bankr. SD Ohio 1986).

17 Federal Rule of Civil Procedure 9(b) requires the identification of the specific circumstances
18 constituting fraud so the defendant can prepare an adequate answer to the allegations. *Moore vs.*
19 *Kayport Package Express, Inc.*, 885 F.2d 531 (9th Cir.1989). In order to properly allege fraud with
20 particularity, the “pleader must state the time, place and specific content of the false representations
21 as well as the identities of the parties to the misrepresentations.” *Semegen v. Weider*, 780 F.2d 727,
22 731 (9th Cir.1985); *Bosse v. Crowell Collier and MacMillan*, 565 F.2d 602, 611 (9th Cir. 1977). The
23 “particularity” requirement serves to provide defendants with adequate notice of both the nature and
24 grounds of the claim, to protect defendants from the reputational harm associated with fraud claims
25 and to prevent the filing of claims merely to discover unknown wrongs. *Neubronner v Milken*, 6 F.3d

26 ¹A true and correct copy of the Lexis/Nexis report on Defendant that reflects the Franchise Tax
27 Boards release of the Debtor’s debts - all pre-petition is attached hereto as Exhibit “1” and is
28 incorporated herein by this reference.

1 666, 671 (9th Cir. 1993).

2 The fraud allegations must be specific enough to give the defendant notice of the particular
3 misconduct which is alleged to constitute the fraud, so that his can defend against the charge and not
4 just deny that his have done anything wrong. *Semegen v. Weider, supra., Neubronner v Milken, supra.*
5 Allegations that are vague or conclusory are insufficient to satisfy the “particularity” requirement of
6 F.R.C.P. 9(b). *Moore v. Kayport Package Express, supra*, at 540.

7 Satisfying the pleading requirement of Fed. R. Civ. P. 9(b), requires that the time, place, and
8 nature of the Debtor’s alleged misrepresentation be set forth so that the Debtor’s alleged intent to
9 defraud is evident in the Plaintiff’s First Amended Complaint. *Ross v. Bolton*, 904 F.2d 819, 823 (2d
10 Cir. 1990).

11 Throughout his Complaint, Plaintiff failed to plead with particularity the details of Defendant’s
12 alleged fraud. Plaintiff’s Complaint fails to specify the precise time, place or content of any of
13 Defendant’s alleged fraudulent conduct. The allegations presented in Plaintiff’s Complaint are the
14 garden variety examples of vagueness that the F.R.C.P. was designed to combat and prevent.
15 Plaintiff’s Complaint fails to identify with sufficient particularity a specific instance of misconduct
16 by Defendant (i.e., who, what where?).

17 As Plaintiff cannot state a viable cause of action for fraud, as discussed above, Plaintiff cannot
18 state a cause of action pursuant to 11 U.S.C. §523(a)(2)(A), and said claim is properly dismissed.

19 (b) **PLAINTIFF’S FRAUD CLAIM IS BARRED BY THE**
20 **APPLICABLE 3-YEAR STATUTE OF LIMITATIONS**
21 **FOR FRAUD OF CODE OF CIVIL PROCEDURE § 338**

22 California Code of Civil Procedure §338 provides a 3-year statute of limitations for fraud.
23 Plaintiff’s Complaint §27 alleges that as of 1-16-2013 (the time Defendant allegedly induced Plaintiff
24 to release his lien securing the Plaintiff’s loan of \$275,000.00 to Defendant to allow Defendant to
25 sell the real property which was subject to the lien), Defendant knew he was not going to pay back
26 the loan to Plaintiff and had no intention of doing so. He allegedly represented to Plaintiff that if
27 Plaintiff would release the lien, Defendant would sell the subject property and pay back plaintiff in
28

1 full. Plaintiff does not explain how this fraud claim is not barred by the applicable 3-year statute of
2 limitations for fraud of Code of Civil Procedure § 338? Said fraud claim was discharged by operation
3 of law 3 years after, as of 1-16-2016. Further, according to the Complaint, Defendant said that he
4 would sell the property, and indeed sold the property. Wherein lies the fraud?

5 (c) **PLAINTIFF'S FRAUD CLAIM IS BARRED BY THE**
6 **DOCTRINE OF JUDICIAL ESTOPPEL**

7 And to the extent Plaintiff will attempt to amend his Complaint to allege when he discovered
8 the alleged fraud, that would be a lesson in futility.

9 Plaintiff sued Defendant in an Orange County lawsuit entitled: Fred Ashour vs. Farhad
10 Naderi, # 30-2016-00869831-CU-BC-CJC for breach of contract and common counts which resulted
11 in a default judgement against Defendant on 3-29-2017.² Said lawsuit did not list a fraud cause of
12 action against Defendant. The doctrine of judicial estoppel precludes Plaintiff from asserting the fraud
13 cause of action in the adversary complaint against Defendant since it was not raised in the underlying
14 state court action. Therefore, the motion to dismiss should also be granted for failure to state a claim
15 upon which relief can be granted based on judicial estoppel.

16 "Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage by
17 asserting one position, and then later seeking an advantage by taking a clearly inconsistent position."
18 Hamilton v. State Farm Fire & Casualty Co., 275 F.3d 778, 782 (9th Cir. 2001). "In the bankruptcy
19 context, a party is judicially estopped from asserting a cause of action not raised in a reorganization
20 plan or otherwise mentioned in the debtor's schedules or disclosure statements." Hamilton v. State
21 Farm Fire & Casualty Co., 275 F.3d at 783, quoted in HPG Corp. v. Aurora Loan Service, LLC, 436
22 B.R. 569, 577 (E.D. Cal. 2010).

23 As alleged in plaintiff's adversary complaint, Plaintiff asserts causes of action for fraud that
24 existed before he filed his state court lawsuit.

25 As a general rule, the court may not consider any material beyond the pleadings in considering

26 ²A true and correct copy of the Orange County lawsuit entitled: Fred Ashour vs. Farhad
27 Naderi, # 30-2016-00869831-CU-BC-CJC is attached hereto as Exhibit "2" and is incorporated herein
28 by this reference.

1 a motion to dismiss under Rule 12(b)(6). Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001)
2 (citation omitted). A court may “take judicial notice of matters of public record without converting
3 a motion to dismiss into a motion for summary judgment . . . but [only when taking] judicial notice
4 of a fact that is [not] subject to reasonable dispute. Id. at 689-690; see also, Fed. R. Evid. 201. In
5 considering defendant’s motion to dismiss, the court may take judicial notice of the proceedings before
6 this court in this bankruptcy case, such as the Orange County lawsuit entitled: Fred Ashour vs. Farhad
7 Naderi, # 30-2016-00869831-CU-BC-CJC for breach of contract and common counts resulted in a
8 default judgement against Defendant on 3-29-2017.³ Accordingly, under Hamilton, the doctrine of
9 judicial estoppel precludes plaintiff from asserting the fraud cause of action in the adversary complaint
10 against Defendant since it was not raised in the state court cause of action. Therefore, the motion to
11 dismiss should also be granted for failure to state a claim upon which relief can be granted based on
12 judicial estoppel.

13 Further, state court judgment has also preclusive effect, as the state court judgment is final
14 under state law for claim or issue preclusion purposes. A judgment may have preclusive effect under
15 the doctrines of claim preclusion and issue preclusion, which are collectively known as res judicata.
16 Taylor v. Sturgell, 553 U.S. 880, 892 and n. 3 (2008), citing inter alia, New Hampshire v. Maine, 532
17 U.S. 742, 748 (2001).

18 “Under the doctrine of claim preclusion, a final judgment forecloses successive
19 litigation of the very same claim, whether or not relitigation of the claim raises the
same issues as the earlier suit.” Id.

20 Issue preclusion “bars ‘successive litigation of an issue of fact or law that was actually litigated and
21 resolved in a valid court determination essential to that prior judgment,’ even if the issue recurs in the
22 context of a different claim.” Taylor v. Sturgell, 553 U.S. at 892, quoting, New Hampshire v. Maine,
23 532 U.S. at 748-749.

24 Under the doctrine of claim preclusion, “a final judgment on the merits bars further claims by
25 parties or their privies based on the same cause of action.” Brown v. Felsen, 442 U.S. 127, 131 (1979),

26 ³A true and correct copy of the Court’s docket of the the Orange County lawsuit entitled: Fred
27 Ashour vs. Farhad Naderi, # 30-2016-00869831-CU-BC-CJC showing the default judgement and the
28 Default Judgement is attached hereto as Exhibit “3” and is incorporated herein by this reference.

1 quoting Montana v. United States, 440 U.S. 147, 153 (1979). Under the federal standard of claim
2 preclusion (or res judicata) applicable to this court's orders, three elements must be met for issue
3 preclusion to apply: (1) an identity of claims; (2) a final judgment on the merits; and (3) privity
4 between parties. Stratosphere Litigation L.L.C. v. Grand Casinos, Inc., 298 F.3d 1137, 1142 n. 3 (9th
5 Cir. 2002) (citation omitted). The doctrine of claim preclusion is applicable here because the court's
6 orders allowing defendant's creditor claim involve the same cause of action since the plaintiff in this
7 adversary proceeding seeks damages based on defendant's assertion of his creditor claim; the orders
8 are final judgments on the merits; and the same parties are involved in both the claims allowance
9 litigation and in this adversary proceeding. Claim preclusion prevents litigation of all grounds for, or
10 defenses to, recovery that were previously available to the parties, regardless of whether they were
11 asserted or determined in the prior proceeding. Brown v. Felsen, 442 U.S. at 131, citing Chicot County
12 Drainage District v. Baxter, 308 U.S. 371, 378 (1940). Plaintiff could have raised his claims of breach
13 of contract and contempt of court now asserted in his adversary complaint earlier in objecting to
14 defendant's creditor claim in the claims allowance litigation, but did not.

15 The doctrine of claim preclusion prevents plaintiff from doing so now.

16 Under the federal standard of issue preclusion applicable to this court's orders, four elements
17 must be met for issue preclusion to apply: (1) the issue sought to be precluded must be the same as
18 that involved in the prior action; (2) the issue must have been actually litigated; (3) it must have been
19 determined by a valid and final judgment; and (4) the determination must have been essential to the
20 final judgment. Palm v. Klapperman (In re Cady), 266 B.R. 172, 183 (9th Cir. BAP 2001) (citation
21 omitted).

22 The Orange County court's default judgement order for breach of contract meets this standard
23 and bars further action of Plaintiff to now allege fraud. The Defendant's liability emerging from the
24 real property was actually litigated by the parties, was determined by valid and final judgments of this
25 court, namely, the order allowing the default judgement based on breach of contract, only. The
26 determination of the issue of breach of contract (and not fraud) was essential to the final default
27 judgement. Accordingly, plaintiff is also barred by the doctrine of issue preclusion from alleging a
28

1 fraud claim in this adversary proceeding.

2 c. **CONCLUSION**

3 Here, Plaintiff has not demonstrated, nor can he state a viable claim under any cause of action
4 in his Complaint; lacking liability and filed for the purpose of harassment, unreasonable delay, and
5 to obtain an unfair advantage in the state court action. This is particularly so when one examines the
6 Complaint's claims, which consists of no more than the gratuitous and bare-bones boilerplate
7 conclusions minimally invoking this Court's jurisdiction.

8 For the above reasons, Defendant prays that this Court dismiss Plaintiff's Complaint with
9 prejudice, that Plaintiff not be granted leave to amend, that Plaintiff take nothing by his Complaint,
10 and that Defendant's alleged debt to Plaintiff be discharged. Further, Defendant prays that this Court
11 issue a finding of fact that the claims brought by Plaintiff are dischargeable, and that pursuant to 11
12 U.S.C. §524(a)(1) and (2), this discharge should also serve to void any future judgment to determine
13 the personal liability of Defendant and operate as a permanent injunction against any actions whether
14 commenced pre-petition or post-petition. Further, Defendant prays that this Court award Defendant's
15 costs and reasonable attorney's fees in an amount which will be ascertained, pursuant to 11 U.S.C.
16 §523(d) and Federal Rule of Bankruptcy Procedure 9011.

17 According, Defendant respectfully requests that the Court enter an order granting the *Motion*
18 in its entirety, and providing for such other and further relief as this Court deems just.

19
20 DATED: January 8, 2018

LAW OFFICE OF BARUCH C. COHEN
A Professional Law Corporation

21 By /S/ Baruch C. Cohen
22 Baruch C. Cohen, Esq.
23 *Attorney for Defendant Farhad Naderi*
24
25
26
27
28

Personal Solutions: Credit Reports, Credit Screen, Protection Against Identity Theft Page 2 of 3

Available until
06/12/2017

- Report Does Not Update

Cancel access to your Credit Report
within 30 days of purchase

Public Records

This section includes public record items Equifax obtained from local, state and federal courts through a third party vendor, LexisNexis. They can be contacted at:
<http://equifaxconsumers.lexisnexis.com>
 1.877.303.5173
 LexisNexis Consumer Center
 P.O. Box 105615
 Atlanta, GA 30348-5108

Equifax

Court	Plaintiff	Docket Number	Filing Date	Balance Amount	Account Status	Type
ORANGE CO		2016000215617	05/2016	\$81,178	Released on 02/01/2016	Tax Lien/Other
ORANGE CO		2014000409001	09/2013	\$29,508	Released on 11/01/2014	Tax Lien/Other

TransUnion

Court	Plaintiff	Docket Number	Filing Date	Balance Amount	Account Status	Type
	STATE OF CALIFORNIA	14000215617	05/2016	\$81,178		Tax Lien/Other
	STATE OF CALIFORNIA	11000215001	09/2013	\$29,508	Released on 11/04/2014	Tax Lien/Other

Experian

You have no public records on file

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ELECTRONICALLY FILED
Superior Court of California,
County of Orange

08/17/2016 at 10:48:41 AM

Clerk of the Superior Court
By Christin Dawson, Deputy Clerk

1 R. KEVIN FISHER (State Bar No. 131455)
2 FISHER & KREKORIAN
3 2121 Park Drive
4 Los Angeles, California 90026
5 Telephone (310) 862-1220

6 Attorney for Plaintiff
7 FRED ASHOUR

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

Judge Craig Griffin

11 FRED ASHOUR,

12 Plaintiff,

13 vs.

14 FARHAD NADERI, an individual,
15 aka FRED NADERI; and
16 DOES 1 Through 20, Inclusive,

17 Defendants.

CASE NO.: 30-2016-00868831-CU-BC-CJC

COMPLAINT FOR:
(1) BREACH OF CONTRACT &
(2) COMMON COUNTS

18 Plaintiff, Fred Ashour, brings this action against defendants for general, compensatory, and
19 statutory damages, pre-judgment interest, costs, and attorneys' fees; and other appropriate and just
20 relief resulting from:

21 **GENERAL ALLEGATIONS**

22 1. Plaintiff, Fred Ashour ("Plaintiff"), is an individual residing in Orange County, State
23 of California.

24 2. At all times relevant hereto, Defendant, Farhad Naderi, also known as Fred Naderi, is
25 an individual believed to be residing in the County of Orange, State of California.

26 3. The true names and capacities, whether individual, corporate, associate or otherwise,
27 of the Defendants sued herein as Does 1 through 20, are unknown to Plaintiff, who therefore sues
28 said Defendants by such fictitious names. Plaintiff will amend this Complaint to insert the true

1 names and capacities of said Defendants when same have been ascertained. Each of the Defendants
2 designated herein as a "Doe" is legally responsible in some manner for the conduct alleged herein
3 and for the damages suffered by Plaintiff.

4 4. At all times material hereto, each of the Defendants were the agents, servants and/or
5 employees of each of the remaining Defendants, acted within the scope, purpose and course of said
6 agency, service and/or employment with the express or implied knowledge, permission and/or
7 consent of the remaining Defendants, and ratified and approved the acts of the other Defendants.

8 5. Plaintiff is informed and believes, and based thereon alleges, that any corporate
9 and/or business entity defendants are a mere sham and/or shell organized and operated as the alter
10 ego of Farhad Naderi and/or the Doe defendants, and there has existed such a unity of ownership and
11 interest between the entities and Farhad Naderi and/or the Doe defendants, and such complete
12 control by Farhad Naderi and/or the Doe defendants over the entities that an injustice will result if
13 the theoretical existence of the corporate entity is not disregarded and Farhad Naderi and/or the Doe
14 defendants and/or the entities held liable for the indebtedness of each other that failing to pierce the
15 corporate veil would permit an abuse of the corporate privilege and would sanction fraud.

16 **FIRST CAUSE OF ACTION**

17 **(For Breach of Contract Against All Defendants)**

18 6. On January 16, 2013, Plaintiff and Defendants entered into an promissory note
19 ("NOTE") agreement whereby Defendants borrowed from and promised to repay Plaintiff
20 \$275,000.00. A true and correct copy of the NOTE is attached as Exhibit "A."

21 7. By its terms the NOTE became due and payable on January 16, 2015.

22 8. Plaintiff has performed fully under the terms of the NOTE except to the extent
23 excused or prevented by Defendants.

24 9. Beginning on January 16, 2015 and continuing through the present date Defendants
25 breached the terms of the NOTE by failing to pay Plaintiff \$275,000.00.

26 10. As a proximate result of the breach of the terms of the NOTE by Defendants, Plaintiff
27 has suffered damages in the principal amount of \$275,000.00.

SECOND CAUSE OF ACTION

(For Common Counts Against All Defendants)

11. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 10 above and incorporates the same by this reference as if set forth in full.

12. Within the last two years Defendants became indebted to Plaintiff on an open book account for money due.

13. Within the last two years because an account was stated in writing by and between Plaintiff and Defendants in which it was agreed that Defendants were indebted to Plaintiff in the amount of \$275,000.00.

14. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff is entitled to attorney's fees by statute.

WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT AS FOLLOWS:

1. For general compensatory damages in the amount of \$275,000.00;
2. For an award of interest, including pre-judgment and post-judgment interest, at the legal rate;
3. For costs of suit incurred herein;
4. For attorney's fees; and
5. For such other and further relief as the court may deem just and proper.

Date: August 17, 2016

FISHER & KREKORIAN

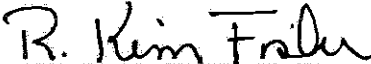

R. Kevin Fisher
Attorney for Plaintiff
FRED ASHOUR

EXHIBIT A

Exhibit # 2 Page # 4

PROMISSORY NOTE

Principal amount: \$ 275,000.00

DATE, 1/16/13

FOR VALUE RECEIVED, I, Farhad Naderi (Borrower)
promise to pay Fred Ashour (Lender)
The sum of Two Hundred Seventy Five Thousand Dollars
(\$ 275,000.00), and interest at the yearly rate of 0 % on the unpaid
balance as specified below.

Borrower will pay one lump payment in lawful money of the United States on:
1/16/15

Payments will be applied first to interest and then to principal.

This note may be prepaid by the Borrower at any time in whole or in part without
premium or penalty.

The Borrower must promptly inform the Lender of any change in name or address.

IN WITNESS WHEREOF, I set my hand under seal this 16th day of
January, 2013 and I acknowledge receipt of a completed copy of this
instrument.

[Signature]
Borrower's Signature

Permanent Address: 32 Via Del Tesoro
San Clemente, CA 92673

Driver's License Number: A8864043 - CA

See Attached CA Acknowledgement

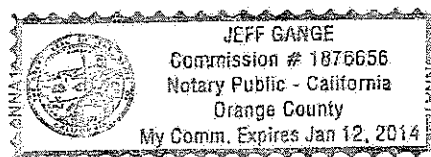


Exhibit # 2 Page # 5

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On Jan 16, 2013 before me, Jeff Gange Notary Public
(Here, insert name and title of the officer)

personally appeared Farhad Nadiri

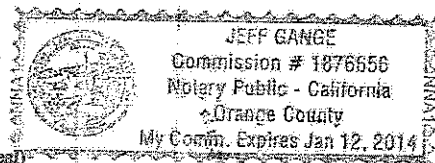
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Promissory Note
(Title or description of attached document)

275,000.00
(Title or description of attached document continued)

Number of Pages 1 Document Date 1/16/13

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☒ Individual(s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, -is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - Indicate title or type of attached document, number of pages and date.
 - Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

90

After Recording Return To:
FARHAD NADERI
32 Via Del Tesoro
San Clemente
CA 92673

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder
21.00
2011000249957 12:49 pm 05/19/11
90 414 D11 5
0.00 0.00 0.00 0.00 12.00 0.00 0.00 0.00

[Space Above This Line For Recording Data]

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this Security Instrument are defined below, in the "Definitions" Section of the Fictitious Deed of Trust, and in Sections 3, 11, 13, 18, 20 and 21 of the Fictitious Deed of Trust. Certain rules regarding the usage of words used in this Security Instrument are also provided in Section 16 of the Fictitious Deed of Trust.

IT
5P
CC

(A) "Security Instrument" means this document, which is dated 5, 19, 2011 together with all Riders to this document.

(B) "Borrower" is FARHAD NADERI. Borrower is the trustor under this Security Instrument.

(C) "Lender" is FARID ASHOUR. Lender is a _____ organized and existing under the laws of _____. Lender's address is 16621 Honeybee Dr. Tustin, CA. Lender is the beneficiary under this Security Instrument. 92782

(D) "Trustee" is FARID ASHOUR.

(E) "Note" means the promissory note signed by Borrower and dated Sep 9, 2009. The Note states that Borrower owes Lender Two Hundred Seventy Five Thousand Dollars. (U.S. \$ 275,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments (as defined in the Fictitious Deed of Trust) and to pay the debt in full not later than Sep 9, 2016.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] _____ |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider | |

All references to section numbers in the Security Instrument that are contained in the Riders refer to those sections of the same number incorporated from the Fictitious Deed of Trust.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of ORANGE:
[Name of Recording Jurisdiction]

See Exhibit "A"

which currently has the address of 32 Via Del Tesoro
[Street]
San Clemente, California 92673 ("Property Address").
[City] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Exhibit "A"

PARCEL A:

Lot 16 of Tract 11793, in the City of San Clemente, County of Orange, State of California, as shown on a map recorded in book 521, pages 24 through 27 inclusive of miscellaneous maps, in the office of the County Recorder of Orange County, California. The aforesaid map of Tract 11793 was corrected by a Certificate of Correction recorded on January 24, 1989 as instrument no. 89-40953 of Official Records of said county.

Except therefrom all oil, gas, minerals and other hydrocarbons, below a depth of 500 feet, without the right of surface entry, as reserved in deeds of record.

PARCEL B:

Nonexclusive easements for ingress and egress, access, drainage, maintenance and other purposes as described in the project documents.

State of California

County of ORANGE

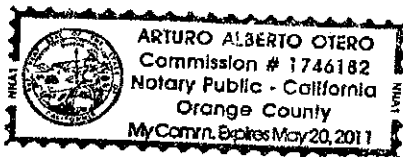
On 05/19/11 before me, ARTURO A. OTERO Notary Public personally appeared
FARHAD MAHERI

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



Case Summary:

Main Document

Page 31 of 37

Case Id:	30-2016-00869831-CU-BC-CJC
Case Title:	FRED ASHOUR VS. FARHAD NADERI
Case Type:	BREACH OF CONTRACT/WARRANTY
Filing Date:	08/17/2016
Category:	CIVIL - UNLIMITED

Register Of Actions:

ROA	Docket	Filing Date	Filing Party	Document	Select
1	E-FILING TRANSACTION 3447115 RECEIVED ON 08/17/2016 10:46:41 AM.	08/17/2016		NV	
2	COMPLAINT FILED BY ASHOUR, FRED ON 08/17/2016	08/17/2016		6 pages	
3	CIVIL CASE COVER SHEET FILED BY ASHOUR, FRED ON 08/17/2016	08/17/2016		2 pages	
4	SUMMONS ISSUED AND FILED FILED BY ASHOUR, FRED ON 08/17/2016	08/17/2016		1 pages	
5	PAYMENT RECEIVED BY AMERICANLEGALNET FOR 194 - COMPLAINT OR OTHER 1ST PAPER IN THE AMOUNT OF 435.00, TRANSACTION NUMBER 12016141 AND RECEIPT NUMBER 11840191.	08/17/2016		1 pages	
6	CASE ASSIGNED TO JUDICIAL OFFICER GRIFFIN, CRAIG ON 08/17/2016.	08/17/2016		1 pages	
7	CASE MANAGEMENT CONFERENCE SCHEDULED FOR 02/03/2017 AT 09:30:00 AM IN C17 AT CENTRAL JUSTICE CENTER.	08/31/2016		2 pages	
8	E-FILING TRANSACTION 2512086 RECEIVED ON 11/28/2016 12:37:29 PM.	11/28/2016		NV	
9	CASE MANAGEMENT STATEMENT FILED BY ASHOUR, FRED ON 11/28/2016	11/28/2016		6 pages	
10	E-FILING TRANSACTION 2512738 RECEIVED ON 11/30/2016 10:27:33 AM.	11/30/2016		NV	
11	PROOF OF SERVICE OF 30-DAY SUMMONS & COMPLAINT - SUBSTITUTE FILED BY ASHOUR, FRED ON 11/30/2016	11/30/2016		6 pages	
12	E-FILING TRANSACTION NUMBER 4659094 REJECTED.	01/10/2017		1 pages	
13	E-FILING TRANSACTION NUMBER 4661790 REJECTED.	01/17/2017		1 pages	
14	E-FILING TRANSACTION 4671973 RECEIVED ON 02/02/2017 10:11:29 AM.	02/02/2017		NV	
15	PROOF OF SERVICE OF SUMMONS FILED BY ASHOUR, FRED ON 02/02/2017	02/02/2017		6 pages	
16	REQUEST FOR ENTRY OF DEFAULT FILED BY ASHOUR, FRED ON 02/02/2017	02/02/2017		2 pages	
17	CASE MANAGEMENT CONFERENCE SCHEDULED FOR 05/05/2017 AT 09:30:00 AM IN C17 AT CENTRAL JUSTICE CENTER.	02/03/2017		NV	
18	CASE MANAGEMENT CONFERENCE CONTINUED TO 05/05/2017 AT 09:30 AM IN THIS DEPARTMENT.	02/03/2017		NV	
19	MINUTES FINALIZED FOR CASE MANAGEMENT CONFERENCE 02/03/2017 09:30:00 AM.	02/06/2017		1 pages	
20	E-FILING TRANSACTION 4684422 RECEIVED ON 02/27/2017 02:26:19 PM.	03/03/2017		NV	

ROA	Main Document Docket	Page 32 of 37	Filing Date	Filing Party	Document	Select
21	REQUEST FOR COURT DEFAULT JUDGMENT FILED BY ASHOUR, FRED ON 02/27/2017		02/27/2017		2 pages	
22	DECLARATION IN SUPPORT OF DEFAULT JUDGMENT BY COURT CCP 585(D) FILED BY ASHOUR, FRED ON 02/27/2017		02/27/2017		5 pages	
23	STATEMENT OF CASE FILED BY ASHOUR, FRED ON 02/27/2017		02/27/2017		2 pages	
24	REQUEST FOR DISMISSAL OF DOES FILED BY ASHOUR, FRED ON 02/27/2017		02/27/2017		2 pages	
25	PROPOSED DEFAULT JUDGMENT RECEIVED ON 02/27/2017.		02/27/2017		2 pages	
28	MINUTES FINALIZED FOR CHAMBERS WORK 03/29/2017 04:00:00 PM.		03/30/2017		1 pages	
29	JUDGMENT FILED BY ASHOUR, FRED ON 03/29/2017		03/29/2017		2 pages	
30	THE COURT ENTERS JUDGMENT AS TO COMPLAINT.		03/29/2017		NV	
31	COMPLAINT DISPOSED WITH DISPOSITION OF DEFAULT JUDGMENT BY COURT.		03/29/2017		NV	
32	CASE DISPOSED WITH DISPOSITION OF DEFAULT JUDGMENT BY COURT		03/29/2017		NV	
33	CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE		04/11/2017		3 pages	
34	E-FILED TRANSACTION 3542155 RECEIVED ON 05/05/2017 12:38:13 PM.		05/05/2017		NV	
35	ABSTRACT OF JUDGMENT (ISSUED ON 5/5/2017) RECEIVED ON 05/05/2017.		05/05/2017		2 pages	
36	PAYMENT RECEIVED BY AMERICANLEGALNET FOR 141 - ABSTRACT OF JUDGMENT IN THE AMOUNT OF 25.00, TRANSACTION NUMBER 12151390 AND RECEIPT NUMBER 11975173.		05/05/2017		1 pages	

Participants:

Name	Type	Assoc	Start Date	End Date
FARHAD NADERI	DEFENDANT		08/17/2016	
FRED ASHOUR	PLAINTIFF		08/17/2016	
FISHER & KREKORIAN	ATTORNEY		08/17/2016	

Hearings:

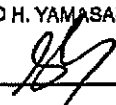
Description	Date	Time	Department	Judge
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[Print this page](#)

 Exhibit # 3 Page # 2

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): R. Kevin Fisher (State Bar No. 131455) 2121 Park Drive Los Angeles, CA 90026 TELEPHONE NO: (310) 862-1225 FAX NO (Optional) (310) 388-0805 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff		02/27/2017 at 02:28:10 PM Clerk of the Superior Court By Natasha Dorfman, Deputy Clerk	FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER MAR 29 2017 DAVID H. YAMASAKI, Clerk of the Court BY:  DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center			
PLAINTIFF: Fred Ashour DEFENDANT: Farhad Naderi, etc., et al.			
JUDGMENT <input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial		CASE NUMBER 30-2016-00869831-CU-BC-CJC	

JUDGMENT

1. ☒ **BY DEFAULT**
- Defendant was properly served with a copy of the summons and complaint.
 - Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
 - Defendant's default was entered by the clerk upon plaintiff's application.
 - ☐ Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
 - ☒ Court Judgment (Code Civ. Proc., § 585(b)). The court considered
 - ☐ plaintiff's testimony and other evidence.
 - ☒ plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. ☐ **ON STIPULATION**
- Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
 - ☐ the signed written stipulation was filed in the case.
 - ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.
3. ☐ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
- The case was tried on (date and time):
before (name of judicial officer).
 - Appearances by:

<input type="checkbox"/> Plaintiff (name each):	<input type="checkbox"/> Plaintiff's attorney (name each):
(1)	(1)
(2)	(2)
<input type="checkbox"/> Continued on Attachment 3b.	
<input type="checkbox"/> Defendant (name each):	<input type="checkbox"/> Defendant's attorney (name each):
(1)	(1)
(2)	(2)
<input type="checkbox"/> Continued on Attachment 3b.	
 - ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
 - ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

Page 1 of 2

PLAINTIFF: Fred Ashour	CASE NUMBER
DEFENDANT: Farhad Naderi, etc., et al.	30-2016-00869831-CU-BC-CJC

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK

4. ☐ Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. Parties. Judgment is

a. ☒ for plaintiff (name each):

Fred Ashour

and against defendant (names):

Farhad Naderi, an individual, aka Fred Naderi

☐ Continued on Attachment 5a.

c. ☐ for cross-complainant (name each):

and against cross-defendant (name each):

☐ Continued on Attachment 5c.

b. ☐ for defendant (name each):

d. ☐ for cross-defendant (name each):

6. Amount.

a. ☒ Defendant named in item 5a above must pay plaintiff on the complaint:

(1) <input checked="" type="checkbox"/> Damages	\$ 275,000.00
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$
(3) <input checked="" type="checkbox"/> Attorney fees	\$ 960.00
(4) <input checked="" type="checkbox"/> Costs	\$ 595.00
(5) <input type="checkbox"/> Other (specify):	\$
(6) TOTAL	\$ 276,555.00

c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input type="checkbox"/> Damages	\$
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$
(3) <input type="checkbox"/> Attorney fees	\$
(4) <input type="checkbox"/> Costs	\$
(5) <input type="checkbox"/> Other (specify):	\$
(6) TOTAL	\$

b. ☐ Plaintiff to receive nothing from defendant named in item 5b.
☐ Defendant named in item 5b to recover costs \$
☐ and attorney fees \$

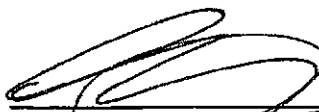
d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs \$
☐ and attorney fees \$

7. ☐ Other (specify):

Date:

3-29-17

☒


JUDICIAL OFFICER

CRAIG L. GRIFFIN

Date:

☐ Clerk, by

, Deputy

(SEAL)

CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy

Page 2 of 2

Main Document Page 35 of 37
**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 03/29/2017

TIME: 04:00:00 PM

DEPT: C17

JUDICIAL OFFICER PRESIDING: Craig Griffin

CLERK: Lenora Silva

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2016-00869831-CU-BC-CJC** CASE INIT.DATE: 08/17/2016

CASE TITLE: **Ashour vs. Naderi**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT ID/DOCUMENT ID: 72562386

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

585 packet received.

585 packet is read and considered.

DEFAULT BY AFFIDAVIT

The Court having reviewed the Default Prove Up by Affidavit, pursuant to C.C.P. 585.5 (d) now rules as follows:

Judgment granted for Plaintiff, Fred Ashour against Defendant, Farhad Naderi, an individual, aka Fred Naderi as set forth in the Judgment signed and filed this date.

The Case Management Conference set for 5/5/17 at 9:30 am in Department C17 is vacated.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Ashour vs. Naderi

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2016-00869831-CU-BC-CJC

I certify that I am not a party to this cause. I certify that the following document(s), Judgment dated 03/29/17, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from email address on April 11, 2017, at 3:24:01 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

FISHER & KREKORIAN
RKF@FKSLAW.NET

Clerk of the Court, by: *Steph Coran*, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

Exhibit # 3 **Page #** 6

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
4929 Wilshire Boulevard, Suite 940, Los Angeles CA 90010

A true and correct copy of the foregoing document entitled **MOTION TO DISMISS COMPLAINT TO DETERMINE NONDISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. § 523(a)(2), DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(1), (a)(3), (a)(4), and (a)(5)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On January 8, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Karen S Naylor (TR) acanzone@burd-naylor.com, knaylor@ecf.epiqsystems.com; knaylor@IQ7technology.com
US Trustee (SA) ustprejon16.sa.ecf@usdoj.gov
Julie J Villalobos (PL) julie@oaktreelaw.com, oaakecfmail@gmail.com; villalobosjr51108@notify.bestcase.com

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On **January 8, 2018**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Farhad Naderi, 142 Cinnamon Teal, Aliso Viejo, CA 92656

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **January 8, 2018**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Erithe Smith, Ronald Reagan Federal Bldg. and Courthouse, 411 West Fourth St., Suite 5040, Santa Ana CA 92701

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

January 8, 2018 **Baruch C. Cohen**

Date Printed Name

/s/ Baruch C. Cohen

Signature